

Between:

████████████████████

Appellant

and

THE REVENUE COMMISSIONERS

Respondent

Determination

Introduction

1. This appeal comes before the Tax Appeals Commission (hereinafter the “Commission”) pursuant to section 146 of the Finance Act 2001 (as amended) against a determination made by the Revenue Commissioners (“the Respondent”) on 25 November 2022. The appeal concerns the refusal by the Respondent of an application for a Transfer of Residence from the United Kingdom to Ireland.
2. The amount of tax in dispute is €82,200.
3. This appeal has been determined, by agreement of the Parties, without an oral hearing pursuant to section 949U of the Taxes Consolidation Act 1997 [hereinafter the “TCA 1997”].

Background

4. Mr ██████████ (hereinafter the “Appellant”) is a taxpayer who on 6 January 2022 purchased and took delivery of motor vehicle registration number ██████████ in the United Kingdom.

5. The Appellant submitted a Transfer of Residence (hereinafter “TOR”) claim pursuant to Statutory Instrument No. 59/1993 Vehicle Registration Tax (Permanent Reliefs) Regulations, 1993 (hereinafter “SI 59/1993”) claiming an exemption for the payment of Vehicle Registration Tax (hereinafter “VRT”) on the basis that his normal residence until 10 July 2022 was in the United Kingdom.
6. The Respondent refused the Appellant’s exemption to VRT claim and the Appellant paid €82,200 in VRT. The motor vehicle was registered in the State under the vehicle registration number [REDACTED].
7. The Appellant appealed the Respondent’s refusal and on 25 November 2022 the Respondent’s National VRT Service rejected the appeal finding that the Appellant’s normal residence was deemed to have been in the State prior to 11 July 2022.
8. The Appellant appealed the Respondent’s decision to the Commission by way of a Notice of Appeal submitted to the Commission on 21 December 2022.
9. Statements of Case were received by the Commission from the Appellant on 8 March 2023 and from the Respondent on 9 March 2023.
10. On 22 March 2023 the Commission wrote to the Parties indicating its intention to determine the within appeal pursuant to section 949U of the TCA1997 and allowed the Parties 21 days to indicate their disagreement with same. Neither Party has objected to this course of action. As a result the within appeal has been determined pursuant to section 949U of the TCA1997.

Legislation and Guidelines

11. The legislation relevant to the within appeal is as follows:

Section 134 of the Finance Act 1992

(1) A vehicle may, subject to any conditions, restrictions or limitations prescribed by the Minister by regulations made by him under section 141 be registered without payment of vehicle registration tax if the vehicle is—

(a) the personal property of a private individual and is being brought permanently into the State by the individual when he is transferring his normal residence from a place outside the State to a place in the State,

...

Regulation 3 of SI 59/1993

“(1) In these Regulations—

“ the Act” means the Finance Act, 1992 (No. 9 of 1992);

“normal residence” means the place where a person usually lives, that is to say, where he lives for at least 185 days in each year, because of personal and occupational ties, or, in the case of a person with no occupational ties, because of personal ties.

However, the normal residence of a person whose occupational ties are in a different place from his personal ties and who consequently lives in turn in different places situated in 2 or more countries shall be regarded as being the place of his personal ties:

Provided that such person returns to the place of his personal ties regularly. This proviso shall not apply where the person is living in a country in order to carry out a task of a duration of less than one year.

A person who lives in a country primarily for the purposes of attending a school or university or other educational or vocational establishment shall not be regarded as having his normal residence in that country.

“personal property” means property for the personal use of the person concerned and his household living with him outside the State but does not include property which by reason of its nature or quantity reflects any commercial interest or is intended to be used for any commercial purpose.”

Regulation 4 of SI 59/1993 – “Transfer of Residence”

(1) Subject to paragraph (5), the relief under section 134 (1) (a) of the Act shall be granted for any vehicle—

(a) which is the personal property of an individual transferring his normal residence to the State and which has been in the possession of and used by him outside the State for a period of at least six months before the date on which he ceases to have his normal residence outside the State,

...

(3) Proof shall be supplied to the Commissioners within one month of the date of the application for the relief aforesaid that the conditions specified in paragraph (1) of this Regulation have been compiled with. The proof shall consist of—

...

(b) in relation to the possession of and use of the vehicle by the person concerned for the appropriate period aforesaid, the vehicle registration document and insurance certificates for the vehicle,

(c) in relation to normal residence outside the State, documents relating to the acquisition of property, or to employment or cessation of employment, or to other transactions carried out in the course of day-to-day living,

(d) in relation to the transfer of normal residence to a place in the State, documents relating to the disposal of property in the country of departure and the acquisition of property in the State or to employment (including statements in writing from the person's employer in the State), and

(e) evidence of the date on which the vehicle was brought into the State,

and, in addition to the foregoing or in substitution for it or any of it, any other documentary evidence the Commissioners require or accept.”

Submissions

Appellant's Submissions

12. The Appellant submitted the following in support of this appeal in his Notice of Appeal:

“██████████ transferred his normal residence permanently from the UK to Ireland on 10 July 2022 when he moved to Ireland. Mr. ██████████ had been living in London since May 2011 and was employed by ██████████ in London. ██████████ wife and children moved to Ireland in August 2021, however he continued living in his London property that he owned until he moved to Ireland on 10 July 2022. Whilst Mr. ██████████ commenced employment with an Irish company, ██████████, on 4 April 2022, he worked remotely from the UK until he transferred his residence to Ireland on 10 July 2022.

As part of his move, Mr. ██████████ claimed VRT transfer of residence exemption on the vehicle with the registration number ██████████ in accordance with S.I. No. 59/1993 Vehicle Registration Tax (Permanent Reliefs) Regulations, 1993. Mr

██████████ had possession and use of the vehicle from 6 January 2022 until the move on 10 July 2022.

Revenue rejected the claim to this exemption and charged Mr. ██████████ VRT and VAT of EUR 82,200 which was paid. On 5 September 2022, the rejection of the claim to VRT transfer of residence exemption was appealed. Mr ██████████ was informed on 25 November 2022 that Revenue had refused the appeal on the basis that his normal residence is deemed to have been in the State prior to the transfer of the vehicle on 10 July 2022.

It is our view that where a person has personal and occupational ties in two countries, you must attach particular importance to the length of that person's stay in a particular country. Mr ██████████ normal residence had been the UK since 2011 and it is clear that where a person is away for such a length of time a movement of that person's permanent residence is a gradual process taken over a period of time. In this regard, we refer to the ECJ case C-528/14. On this basis we assert that Mr. ██████████ transferred his normal residence permanently from the UK to Ireland on 10 July 2022 and that he was entitled to the VRT transfer of residence exemption on the vehicle."

13. The following was submitted in support of this appeal in the Appellant's Statement of Case:

“- ██████████ had been living and working in London since May 2011.

- Mr ██████████ wife and children moved to Ireland in August 2021, however Mr ██████████ continued working and living in London.

- In October 2021, ██████████ wife went into hospital due to complications with her labour. As a consequence, Mr ██████████ requested from his employer to go from working 5 days a week in London to 3 days.

- After this health scare Mr ██████████ started looking for an Irish employment.

- On 4 April 2022, Mr ██████████ commenced employment with an Irish company but worked remotely from London until he moved to Ireland on 10 July 2022. Mr ██████████ took a significant pay cut for this job in order to care for his family.

- As part of his move to Ireland on 10 July 2022, Mr ██████████ claimed VRT transfer of residence exemption on his vehicle with a registration number ██████████.

- Mr ██████ originally ordered the vehicle on 4 September 2021 and it was due to be delivered on 30 September 2021. However, due to a manufacturing delay the vehicle was not delivered until 6 January 2022.

- Mr ██████ had possession and use of the vehicle in the UK from 6 January 2022 until the move to Ireland on 10 July 2022.

- Revenue rejected the VRT transfer of residence exemption and declared that VRT and VAT of €82,200 was payable.

- Mr ██████ has appealed this assessment on the basis that he transferred his normal residence permanently from the UK to Ireland on 10 July 2022 and was therefore entitled to avail of the VRT transfer of residence exemption.

- Mr ██████ was living and working in London until 10 July 2022 and has written confirmation from his employer which corroborates this.

- Mr ██████ principal private residence in London was bought in March 2015 and sold on 11 July 2022. His household goods were transferred to Ireland on 10 July 2022 as part of the sales process.

- Mr ██████ contends that where a person is away from a country for a significant length of time, a movement of that person's permanent residence is a gradual process taken over a period of time. Mr ██████ assertion is that this process began in October 2021 when he went from working 5 days a week in London to 3 days and that the completion of his transfer of normal residence from the UK to Ireland was on 10 July 2022. In this regard, ECJ Case C-528/14 refers."

14. The Appellant submitted the following documentation in support of this appeal:

- (i) Letter from Professor ██████ dated 22 October 2021; and
- (ii) Email from Appellant to ██████ dated 29 October 2021.

Respondent's Submissions

15. The following was submitted in the Respondent's Statement of Case:

"The vehicle in question, ██████, was purchased on 06/01/2022.

Mr [REDACTED] personal ties and thus, normal residence transferred to the state in August 2021. Mr [REDACTED] spouse applied for TOR on 20/08/2021 and TOR relief was granted on 20/08/2021.

Mr [REDACTED] signed a Residential Tenancy agreement, along with his spouse, in respect of [REDACTED], on 06/08/2021.

Having reviewed the application and supporting documentation provided by Mr [REDACTED], Revenue's position remains that the relief is not due as his normal residence was already in the State."

Material Facts

16. The following material facts are not at issue in the within appeal and the Commissioner accepts same as material facts:

- (i) The Appellant purchased and took delivery of motor vehicle registration number [REDACTED] in the United Kingdom on 6 January 2022.
- (ii) The Respondent and his wife signed a lease for a residential property in [REDACTED] Dublin on 6 August 2021.
- (iii) The Respondent's wife and children transferred their normal residence to Ireland on 20 August 2021.
- (iv) The Appellant took up employment with an Irish employer in April 2022.
- (v) The Appellant submitted a Transfer of Residence (hereinafter "TOR") claim pursuant to Statutory Instrument No. 59/1993 Vehicle Registration Tax (Permanent Reliefs) Regulations, 1993 (hereinafter "SI 59/1993") claiming an exemption for the payment of Vehicle Registration Tax (hereinafter "VRT") on the basis that his normal residence until 10 July 2022 was in the United Kingdom.
- (vi) The Respondent refused the Appellant's exemption to VRT claim and the Appellant paid €82,200 in VRT. The motor vehicle was registered in the State under the vehicle registration number [REDACTED].

17. The following material fact is at issue in the within appeal:

(i) The Appellant's normal residence until 10 July 2022 was in the United Kingdom.

18. On the one hand the Appellant has submitted that his normal residence was in the United Kingdom until 10 July 2022 on the basis that:

- (i) He had been living and working in the United Kingdom since 2011;
- (ii) He continued living in the property which he owned in the United Kingdom until 10 July 2022;
- (iii) His wife and children moved to the State in August 2021, however he continued living and working in the United Kingdom until 10 July 2022;
- (iv) In October 2021 as a result of complications of his wife's pregnancy he requested permission from his then employer to go from working 5 days a week in London to 3 days a week;
- (v) Thereafter he commenced looking for work in Ireland;
- (vi) Whilst he commenced employment with an Irish company on 4 April 2022, he worked remotely from the United Kingdom until 10 July 2022;
- (vii) He took possession of the motor vehicle the subject matter of this appeal on 6 January 2022;
- (viii) His principal place of private residence in London was bought in March 2015 and was sold on 11 July 2022.
- (ix) His household goods were transferred to Ireland on 11 July 2022.

19. On the other hand the Respondent has submitted that the Appellant's personal ties and thus his normal residence, transferred to the State in August 2021. The basis for the Respondent's submission in this regard is that the Appellant's wife applied for TOR on 20 August 2021 and same was granted 20 August 2021. In addition the Respondent submitted that the Appellant signed a Residential Tenancy agreement, along with his wife, in respect of [REDACTED], on 6 August 2021.

20. Regulation 3 of SI 59/1993 defines "normal residence" as meaning:

"...the place where a person usually lives, that is to say, where he lives for at least 185 days in each year, because of personal and occupational ties, or, in the case of a person with no occupational ties, because of personal ties.

However, the normal residence of a person whose occupational ties are in a different place from his personal ties and who consequently lives in turn in different places situated in 2 or more countries shall be regarded as being the place of his personal ties:..."

21. Normal residence is defined in Regulation 3 of SI 59/1993 as being the place where a person usually lives for at least 185 days in each year, because of personal and occupational ties. Regulation 3 of SI 59/1993 further provides that the normal residence of a person whose occupational ties are in a different place from his personal ties and who consequently lives in turn in different places situated in 2 or more countries shall be regarded as being the place of his personal ties.
22. The Commissioner has already found as material facts, and it is not in dispute between the Parties, that the Appellant and his wife signed a lease for a residential property on 6 August 2021 and that the Appellant's wife and children transferred their normal residence to Ireland on 20 August 2021. It therefore follows that the Appellant's personal ties were in Ireland from 20 August 2021.
23. The Appellant has submitted that he began the process of moving his normal residence to Ireland in October 2021 when he went from working 5 days a week in London to 3 days a week in London. The Appellant has not provided any documentary evidence to the Commissioner which establishes on the balance of probabilities that this is the case. The Appellant has submitted an email which he sent to [REDACTED] on 29 October 2021 which requested that he be permitted to work from home on 11 days, those being 1, 2, 8, 9, 15, 22, 23, 29 and 30 November 2021 and 6 and 7 December 2021. No documentation containing a response to the Appellant's request has been submitted to the Commissioner.
24. Regulation 4(1)(a) of SI 59/1993 provides that relief under section 134(1)(a) of the Finance Act 1992 shall be granted for any vehicle—

*“(a) which is the personal property of an individual transferring his normal residence to the State and which has been in the possession of and used by him outside the State for a period of at least six months before the date on which he ceases to have his normal residence outside the State,
...”*

25. Regulation 4(3) of SI 59/1993 provides that proof shall be supplied to the Respondent within one month of the date of the application for the relief aforesaid that the conditions

specified in paragraph (1) of this Regulation have been compiled with. The proof shall consist of:

...

(b) in relation to the possession of and use of the vehicle by the person concerned for the appropriate period aforesaid, the vehicle registration document and insurance certificates for the vehicle,

(c) in relation to normal residence outside the State, documents relating to the acquisition of property, or to employment or cessation of employment, or to other transactions carried out in the course of day-to-day living,

(d) in relation to the transfer of normal residence to a place in the State, documents relating to the disposal of property in the country of departure and the acquisition of property in the State or to employment (including statements in writing from the person's employer in the State), and

(e) evidence of the date on which the vehicle was brought into the State,

and in addition to the foregoing or in substitution for it or any of it, any other documentary evidence the Commissioners require or accept.”

26. As with all appeals before the Commission the burden of proof in this appeal lies with the Appellant. As confirmed in *Menolly Homes v Appeal Commissioners* [2010] IEHC 49, the burden of proof is, as in all taxation appeals, on the taxpayer. As confirmed in that case by Charleton J at paragraph 22:-

“This is not a pproof?lenary civil hearing. It is an enquiry by the Appeal Commissioner as to whether the taxpayer has shown that the tax is not payable.”

27. The Commissioner has considered whether the Appellant has discharged the proofs which are required of an applicant for TOR relief as set out in Regulation 4 of SI 59/1993.

28. The Commissioner has considered the documentation submitted by the Appellant in support of this appeal. The only documents which the Appellant has submitted are:

- (i) A letter from Professor [REDACTED] dated 22 October 2021; and
- (ii) An email from Appellant to [REDACTED] dated 29 October 2021.

29. The Appellant has not submitted any documentation whatsoever in relation to:

- (i) the possession of and use of the vehicle by the person concerned for the appropriate period aforesaid, the vehicle registration document and insurance certificates for the vehicle.
- (ii) the Appellant's claimed employment or cessation of employment in the United Kingdom save and except the email dated 29 October 2021 sent by him to [REDACTED]. In particular the Commissioner notes that no documentation has been submitted in relation to the cessation of the Appellant's United Kingdom employment.
- (iii) the disposal of property in the country of departure and the acquisition of property in the State or to employment (including statements in writing from the person's employer in the State). The Commissioner notes that no documentation whatsoever in relation to the disposal of the Appellant's London property has been submitted. In addition no documentation in relation to the Appellant's take up of employment in the State has been submitted although it is not in dispute between the Parties that the Appellant took up employment with an Irish employer in April 2022 and the Commissioner has already accepted this as a material fact.
- (iv) evidence of the date on which the vehicle was brought into the State.

30. The Commissioner notes that the Appellant is an experienced businessman and as such considers that he is aware of the importance of supporting documentation in relation to this appeal. In addition the Commissioner notes that the Appellant has had the benefit of the advice of a tax advisor throughout the progression of this appeal.

31. As a result of the above, the Commissioner is satisfied that the Appellant has not discharged the burden of proof in relation to this material fact and has not established that his normal residence until 10 July 2022 was in the United Kingdom.

32. Therefore this material fact is not accepted.

33. The Commissioner is further satisfied and finds as a material fact that, as a result of the Appellant's personal ties being in Ireland from August 2021 and because the Appellant took up employment with an Irish employer in April 2022, Ireland became the Appellant's normal place of residence sometime between August 2021 and April 2022.

34. For the avoidance of doubt the Commissioner finds the following material facts in this appeal:

- (i) The Appellant purchased and took delivery of motor vehicle registration number [REDACTED] in the United Kingdom on 6 January 2022.

- (ii) The Appellant and his wife signed a lease for a residential property in [REDACTED] Dublin on 6 August 2021.
- (iii) The Appellant's wife and children transferred their normal residence to Ireland on 20 August 2021.
- (iv) Ireland became the Appellant's place of normal residence sometime between August 2021 and April 2022.
- (v) The Appellant submitted a Transfer of Residence (hereinafter "TOR") claim pursuant to Statutory Instrument No. 59/1993 Vehicle Registration Tax (Permanent Reliefs) Regulations, 1993 (hereinafter "SI 59/1993") claiming an exemption for the payment of Vehicle Registration Tax (hereinafter "VRT") on the basis that his normal residence until 10 July 2022 was in the United Kingdom.
- (vi) The Respondent refused the Appellant's exemption to VRT claim and the Appellant paid €82,200 in VRT. The motor vehicle was registered in the State under the vehicle registration number [REDACTED].

Analysis

35. Regulation 4 of SI 59/1993 provides that relief from the payment of VRT shall be granted for any vehicle

"(a) which is the personal property of an individual transferring his normal residence to the State and which has been in the possession of and used by him outside the State for a period of at least six months before the date on which he ceases to have his normal residence outside the State,"

36. The Commissioner has already found as material facts that:

- (i) The Appellant purchased and took delivery of motor vehicle registration number [REDACTED] in the United Kingdom on 6 January 2022; and
- (ii) Ireland became the Appellant's place of normal residence sometime between August 2021 and April 2022.

37. As a result the Appellant was not in possession of, and did not use, the motor vehicle the subject matter of this appeal outside the State for a period of at least six months before the date on which he ceased to have his normal residence outside the State.

38. It therefore follows that the Appellant is not entitled to relief from VRT as provided for in section 134 of the Finance Act 1992.

Determination

39. For the reasons set out above, the Commissioner determines that the Appellant in this appeal has not succeeded in showing that the relevant tax was not payable.

40. It is understandable that the Appellant might be disappointed with the outcome of his appeal. The Appellant was correct to check to see whether his legal rights were correctly applied.

41. This Appeal is determined in accordance with Part 40A of the TCA1997 and in particular, section 949U thereof. This determination contains full findings of fact and reasons for the determination. Any party dissatisfied with the determination has a right of appeal on a point of law only within 42 days of receipt in accordance with the provisions set out in the TCA1997.



Clare O'Driscoll
Appeal Commissioner
24 April 2023